

distribution. Thus, consumers have a staggering variety of sources of video content beyond Comcast and its rival MVPDs.

The combination of NBCU and Comcast's content assets under the new NBCU – coupled with management of the new NBCU by Comcast, an experienced, committed distribution innovator – will enable the creation of new pathways for delivery of content to consumers on a wide range of screens and platforms. The companies' limited shares in all relevant markets, fierce competition at all levels of the distribution chain, and ease of entry for cable and online programming ensure that the risk of competitive harm is insignificant. Moreover, the FCC's rules governing program access, program carriage, and retransmission consent provide further safeguards for consumers as do the additional public interest commitments made by the companies to the FCC.

At the same time, the transaction's public interest benefits – particularly for the public interest goals of diversity, localism, competition, and innovation – are substantial. Through expanded access to outlets, increased investment in outlets, and lower costs, the new venture will be able to increase the amount, quality, variety, and availability of content more than either company could on its own, thus promoting *diversity*. This includes content of specific interest to minority groups, children and families, women, and other key audience segments. The new venture will also be able to provide more and better local programming, including local news and information programming, thereby advancing *localism*. NBCU and Comcast will be more innovative and effective players in video programming and distribution, spurring other content producers and distributors to improve their own services, thus enhancing *competition*. Marrying NBCU's programming assets with Comcast's multiple distribution platforms will make it easier for the combined entity to experiment with new business models that will better serve consumers, thus promoting *innovation*.

In addition, Comcast and NBCU have publicly affirmed their continuing commitment to free, over-the-air broadcasting. Despite a challenging business and technological environment, the proposed transaction has significant potential to invigorate NBCU's broadcasting business and expand the important public interest benefits it provides to consumers across this country. NBC, Telemundo, their local O&Os, and their local broadcast affiliates will benefit by having the full support of Comcast, a company that is focused entirely on entertainment, information, and communications and that has strong incentives and the ability to invest in and grow the broadcast businesses it is acquiring, in partnership with the local affiliates.

Moreover, combining Comcast's expertise in multiplatform content distribution with NBCU's extensive content creation capabilities and video libraries will not only result in the creation of more and better programming – it will also encourage investment and innovation that will accelerate the arrival of the multiplatform, "anytime, anywhere" future of video programming that Americans want. This is because the proposed transaction will remove negotiation friction that currently inhibits the ability of Comcast to implement its pro-consumer vision of multiplatform access to quality video programming. Post-transaction, Comcast will have access to more content that it can

make available on more outlets, including the new NBCU's national and regional networks and Comcast's cable systems, video-on-demand ("VOD") platform, and online platform. This increase in the value of services offered to consumers by the new company will stimulate competitors – including non-affiliated networks, non-affiliated MVPDs, and the numerous other participants in the video marketplace – to improve what they offer to consumers.

The past is prologue: Comcast sought for years to develop the VOD business, but it could not convince studio distributors – who were reluctant to permit their movies to be distributed on an emerging, unproven platform – to provide compelling content for VOD. This caution, though understandable in light of marketplace uncertainty, slowed the growth of an innovative and extremely consumer-friendly service. Comcast finally was able to overcome the contractual wrangling and other industry resistance to an innovative business model when it joined with Sony to acquire an ownership interest in Metro-Goldwyn-Mayer ("MGM"). This allowed Comcast to "break the ice" and obtain access to hundreds of studio movies that Comcast could offer for free on VOD. Thanks to Comcast's extensive efforts to foster the growth of this new technology, VOD has gone on to become extremely popular. Comcast customers have now used Comcast's VOD service more than 14 billion times. By championing the growth of VOD, Comcast has been able to benefit not only its customers but also program producers, and it has stimulated other MVPDs to embrace the VOD model.

The formation of the new NBCU will remove negotiation impediments by providing Comcast with control of a rich program library and extensive production capabilities that Comcast can use to develop novel video products and services that will be offered to consumers across an array of distribution platforms. There is every reason to believe that the transaction proposed here will create a pro-consumer impetus for making major motion pictures available sooner for in-home, on-demand viewing and for sustainable online video distribution – which, as the FCC has observed, will help to drive broadband adoption, another key congressional goal.

As noted above, the risk of competitive harm in this transaction is insignificant. Viewed from every angle, the transaction is pro-competitive:

First, combining Comcast's and NBCU's programming assets will give rise to no cognizable competitive harm. Comcast's national cable programming networks account for only about three percent of total national cable network advertising and affiliate revenues. While NBCU owns a larger number of networks, those assets account for only about nine percent of overall national cable network advertising and affiliate revenues. In total, the new NBCU will account for only about 12 percent of overall national cable network advertising and affiliate revenues. The new NBCU will rank as the fourth largest owner of national cable networks, behind Disney/ABC, Time Warner, and Viacom – which is the same rank that NBCU has today. Because both the cable programming market and the broader video programming market will remain highly competitive, the proposed transaction will not reduce competition or diversity, nor will it lead to higher programming prices to MVPDs or consumers, or higher advertising prices.

Even after the transaction, approximately six out of every seven channels carried by Comcast Cable will be unaffiliated with Comcast or the new NBCU.

Second, Comcast's management and ownership interests in NBCU's broadcast properties raise no regulatory or competitive concern. While Comcast will own both cable systems and a stake in NBC owned and operated broadcast stations in a small number of Designated Market Areas ("DMAs"), the FCC's rules do not prohibit such cross-ownership, nor is there any policy rationale to disallow such relationships. The prior cross-ownership prohibitions have been repealed by actions of Congress, the courts, and the FCC. The case for any new prohibition, or any transaction-specific restriction, on cable/broadcast cross-ownership is even weaker today, given the increasingly competitive market for the distribution of video programming and robust competition in local advertising. And, importantly, each of the major DMAs in question has a significant number of media outlets, with at least seven non-NBCU broadcast stations in each DMA as well as other media outlets, including radio. Thus, numerous diverse voices and a vibrantly competitive local advertising environment will remain following the combination of NBCU's broadcast stations and Comcast cable systems in each of the overlap DMAs.

Third, the combination of Comcast's and NBCU's Internet properties similarly poses no threat to competition. There is abundant and growing competition for online video content. Although Comcast operates a video site, called Fancast, and NBCU holds a 32 percent, non-controlling interest in Hulu, a site that provides access to certain online video content, the leader in online viewing (by far) is Google (through YouTube and other sites it has built or acquired), with nearly 55 percent of online video viewing. This puts Google well ahead of Microsoft, Viacom, and Hulu (all of which are in low- or mid-single digits) and even farther ahead of Fancast (currently well below one percent). There are countless other sites that provide robust competition and near-infinite consumer choice. Even if one restricts the analysis to "professional" online video content, the combined entity will still have a small share and face many competitors. On the Internet, content providers essentially control their own destinies since there are many third-party portals as well as self-distribution options. Entry is easy. Thus, the transaction will not harm the marketplace for online video.

Finally, a vertical combination cannot have anticompetitive effects unless the combined company has substantial market power in the upstream (programming) or downstream (distribution) market, and such circumstances do not exist here. As noted, the video programming, video distribution, and Internet businesses are fiercely competitive, and the proposed transaction does not reduce that competition. The recent history of technology demonstrates that distribution platforms are multiplying, diversifying, and increasingly rivalrous. Wired services have been challenged by both satellite and terrestrial wireless services. Cable has brought voice competition to the telephone companies; the telephone companies have added to the video competition that cable already faced; and both cable and phone companies are racing to deploy and improve broadband Internet. Static descriptions of markets have repeatedly failed to capture advances in distribution technologies. In this highly dynamic and increasingly competitive environment, speculative claims about theoretical problems arising from any

particular combination should be subject to searching and skeptical scrutiny, given the accelerating power of technology to disrupt, continuously, all existing market structures.

In any event, there is a comprehensive regulatory structure already in place, comprising the FCC's program access, program carriage, and retransmission consent rules, as well as an established body of antitrust law that provides further safeguards against any conceivable vertical harms that might be presented by this transaction.

Although the competitive marketplace and regulatory safeguards protect against the risk of anticompetitive conduct, the companies have offered an unprecedented set of commitments to provide assurances that competition will remain vibrant. Moreover, the companies have offered concrete and verifiable commitments to ensure certain pro-consumer benefits of the transaction. In addition to the commitment to continue to provide free, over-the-air broadcasting, mentioned previously, the companies have committed that following the transaction, the NBC O&O broadcast stations will maintain the same amount of local news and information programming they currently provide, and will produce an additional 1,000 hours per year of local news and information programming for various platforms. The combined entity will maintain NBCU's tradition of independent news and public affairs programming and its commitment to promoting a diversity of viewpoints, maintaining the journalistic integrity and independence of NBCU's news operations.

Comcast will commit voluntarily to extend the key components of the FCC's program access rules to negotiations with MVPDs for retransmission rights to the signals of NBC and Telemundo O&O broadcast stations for as long as the FCC's current program access rules remain in place. Of particular note, Comcast will be prohibited in retransmission consent negotiations from unduly or improperly influencing the NBC and Telemundo stations' decisions about whether to sell their programming, or the terms and conditions of sale, to other distributors. It would also adopt the "burden-shifting" approach to proof of discriminatory pricing. And the companies would accept the five-month "shot clock" that the Commission applies to program access adjudications.

The companies also have committed that Comcast will use its On Demand and On Demand Online platforms to increase programming choices available to children and families, as well as to audiences for Spanish-language programming. Within three years of closing the transaction, Comcast has committed to add 1,500 additional programming choices appealing to children and families and 300 additional programming choices from Telemundo and mun2 to its VOD platforms. Comcast also will continue to provide free or at no additional charge the same number of VOD choices that it now provides free or at no additional charge, and will make available within three years of closing an additional 5,000 VOD choices over the course of a month that are available free or at no additional charge.

As Comcast makes rapid advances in video delivery technologies, more channel capacity will become available. So Comcast will commit that, once it has completed its digital migration company-wide (anticipated to be no later than 2011), it will add two new independently-owned and -operated channels to its digital line-up each year for the

next three years on customary terms and conditions. Independent programmers would be defined as networks that (1) are not currently carried by Comcast Cable, and (2) are unaffiliated with Comcast, NBCU, or any of the top 15 owners of cable networks, as measured by revenues. With respect to public, educational, and governmental ("PEG") channels, Comcast has affirmatively committed not to migrate PEG channels to digital delivery on any Comcast cable system until the system has converted to all-digital distribution, or until a community otherwise agrees to digital PEG channels, whichever comes first.

We have proposed that these commitments be included in any FCC order approving the transaction and become binding on the parties upon completion of the transaction. A summary of the companies' commitments is attached to this statement.

In the end, the proposed transaction simply transfers ownership and control of NBCU from GE, a company with a very diverse portfolio of interests, to Comcast, a company with an exclusive focus on, and a commitment to investing its resources in, its communications, entertainment, and information assets. This transfer of control, along with the contribution of Comcast's complementary content assets, will enable the new NBCU to better serve consumers. The new NBCU will advance key public policy goals: diversity, localism, competition, and innovation. Competition, which is already pervasive in every one of the businesses in which the new NBCU – and Comcast Cable – will operate, provides abundant assurance that consumer welfare will be not only safeguarded but increased. Comcast and NBCU will succeed by competing vigorously and fairly.

We intend to use the combined assets to accelerate and improve the range of choices that American consumers enjoy for entertainment, information, and communications. We would welcome your support.

## **COMCAST/NBCU TRANSACTION PUBLIC INTEREST COMMITMENTS**

Comcast, GE, and NBC Universal take seriously their responsibilities as corporate citizens and share a commitment to operating the proposed venture in a way that serves the public interest. To demonstrate their commitment to consumers and to other media partners, the parties have made a set of specific, written commitments as part of their public interest filing with the Federal Communications Commission. Comcast, GE, and NBCU are committed to expanding consumer choice, ensuring the future of over-the-air broadcasting, enhancing programming opportunities, ensuring that today's highly competitive marketplace remains so, and maintaining journalistic independence for NBC's news properties. The parties' commitment to these principles will ensure that consumers are the ultimate beneficiaries of the proposed Comcast/NBCU transaction.

### **Applicants' Voluntary Public Interest Commitments**

#### **Local Programming**

**Commitment #1.** The combined entity remains committed to continuing to provide free over-the-air television through its O&O broadcast stations and through local broadcast affiliates across the nation. As Comcast negotiates and renews agreements with its broadcast affiliates, Comcast will continue its cooperative dialogue with its affiliates toward a business model to sustain free over-the-air service that can be workable in the evolving economic and technological environment.

**Commitment #2.** Comcast intends to preserve and enrich the output of local news, local public affairs and other public interest programming on NBC O&O stations. Through the use of Comcast's On Demand and On Demand Online platforms, time slots on cable channels, and use of certain windows on the O&O schedules, Comcast believes it can expand the availability of all types of local and public interest programming.

- For three years following the closing of the transaction, NBC's O&O stations will maintain the same amount of local news and information programming that they currently provide.
- NBC's O&O stations collectively will produce an additional 1,000 hours a year of local news and information programming. This additional local content will be made available to consumers using a combination of distribution platforms.

#### **Children's Programming**

**Commitment #3.** Comcast will use its On Demand and On Demand Online platforms and a portion of the NBC O&Os' digital broadcast spectrum to speak to kids. Comcast intends to develop additional opportunities to feature children's content on all available platforms.

- Comcast will add 500 VOD programming choices appealing to children and families to its central VOD storage facilities within 12 months of closing and will add an additional 1,000 such VOD choices (for a total of 1,500 additional VOD choices) within three years of closing. (The majority of Comcast's cable systems will be connected to Comcast's central VOD storage facilities within 12 months of closing and substantially all will be connected within three years of closing.) Comcast will also make these additional choices available online to authenticated subscribers to the extent that Comcast has the requisite online rights.
- For three years following closing, each of NBC's O&O stations will provide one additional hour per week of children's educational and informational programming utilizing one of the station's multicast channels.

**Commitment #4.** Comcast reaffirms its commitment to provide clear and understandable on-screen TV Ratings information for all covered programming across all networks (broadcast and cable) of the combined company, and to apply the cable industry's best-practice standards for providing on-screen ratings information in terms of size, frequency and duration.

- NBCU will triple the time that program ratings remain on the air after each commercial break (from 5 seconds to 15 seconds).
- NBCU will make program ratings information more visible to viewers by using a larger format.

**Commitment #5.** In an effort to constantly improve the tools and information available for parents, Comcast will expand its growing partnership with Common Sense Media ("CSM"), a highly respected organization offering enhanced information to help guide family viewing decisions. Comcast will work to creatively incorporate CSM information in its emerging On Demand and On Demand Online platforms and other advanced platforms, and will look for more opportunities for CSM to work with NBCU.

- Comcast currently gives CSM content prominent placement on its VOD menus. Comcast and the new NBCU will work with CSM to carry across their distribution platforms more extensive programming information and parental tools as they are developed by CSM. Comcast and NBCU will explore cooperative efforts to develop digital literacy and media education programs that will provide parents, teachers, and children with the tools and information to help them become smart, safe, and responsible users of broadband.
- Upon closing and pursuant to a plan to be developed with CSM, Comcast will devote millions of dollars in media distribution resources to support public awareness efforts over the next two years to further CSM's digital literacy campaign. The NBCU transaction will create the opportunity for CSM and Comcast to work with NBCU's broadcast networks, local broadcast stations, and cable networks to provide a targeted and effective public education campaign on

digital literacy, targeting underserved areas, those with high concentrations of low-income residents and communities of color, as well as target Latino communities with specifically tailored Spanish-language materials.

#### **Programming for Diverse Audiences**

**Commitment #6.** Comcast intends to expand the availability of over-the-air programming to the Hispanic community utilizing a portion of the digital broadcast spectrum of Telemundo's O&Os (as well as offering it to Telemundo affiliates) to enhance the current programming of Telemundo and mun2.

- Within 12 months of closing the transaction, Telemundo will launch a new Spanish language channel using programming from Telemundo's library that has had limited exposure, to be broadcast by each of the Telemundo O&O stations on one of their multicast channels. The Telemundo network also will make this new channel available to its affiliated broadcast stations on reasonable commercial terms.

**Commitment #7.** Comcast will use its On Demand and On Demand Online platforms to feature Telemundo programming.

**Commitment #8.** Comcast intends to continue expanding the availability of mun2 on the Comcast Cable, On Demand, and On Demand Online platforms.

- Comcast will increase the number of VOD choices from Telemundo and mun2 available on its central VOD storage facilities from approximately 35 today, first to 100 choices within 12 months of closing and then to a total of 300 additional choices within three years of closing. Comcast will also make these additional choices available online to its subscribers to the extent that it has the requisite online rights.

#### **Expanded Video On Demand Offerings At No Additional Charge**

**Commitment #9.** Comcast currently provides approximately 15,000 VOD programming choices free or at no additional charge over the course of a month. Comcast commits that it will continue to provide at least that number of VOD choices free or at no additional charge. In addition, within three years of closing the proposed transaction, Comcast will make available over the course of a month an additional 5,000 VOD choices via its central VOD storage facilities for free or at no additional charge.

**Commitment #10.** NBCU broadcast content of the kind previously made available at a per-episode charge on Comcast's On Demand service and currently made available at no additional charge to the consumer will continue to be made available at no additional charge for the three-year period after closing.



### **Public, Educational, and Governmental ("PEG") Channels**

**Commitment #11.** With respect to PEG channels, Comcast will not migrate PEG channels to digital delivery on any Comcast cable system until the system has converted to all-digital distribution (i.e. until all analog channels have been eliminated), or until a community otherwise agrees to digital PEG channels, whichever comes first.

**Commitment #12.** To enhance localism and strengthen educational and governmental access programming, Comcast will also develop a platform to host PEG content On Demand and On Demand Online within three years of closing.

- Comcast will select five locations in its service area to test various approaches to placing PEG content on VOD and online. Comcast will select these locations to ensure geographic, economic and ethnic diversity, with a mix of rural and urban communities, and will consult with community leaders to determine which programming – public, educational and/or governmental – would most benefit local residents by being placed on VOD and online.
- Comcast will file annual reports to inform the Commission of progress on the trial and implementation of this initiative.

### **Carriage for Independent Programmers**

**Commitment #13.** As Comcast makes rapid advances in video delivery technologies, more channel capacity will become available. So Comcast will commit that, once it has completed its digital migration company-wide (anticipated to be no later than 2011), it will add two new independently-owned and -operated channels to its digital line-up each year for the next three years on customary terms and conditions.

- New channels are channels not currently carried on any Comcast Cable system.
- Independent programmers are entities that are not affiliated with Comcast, NBCU, or any of the top 15 owners of cable networks (measured by revenue).

### **Expanded Application of the Program Access Rule Protections**

**Commitment #14.** Comcast will commit to voluntarily accept the application of program access rules to the high definition (HD) feeds of any network whose standard definition (SD) feed is subject to the program access rules for as long as the Commission's current program access rules remain in place.

**Commitment #15.** Comcast will commit to voluntarily extend the key components of the FCC's program access rules to negotiations with MVPDs for retransmission rights to

the signals of NBC and Telemundo O&O stations for as long as the Commission's current program access rules remain in place.

- Comcast will be prohibited in retransmission consent negotiations from unduly or improperly influencing the NBC and Telemundo O&O stations' decisions about the price or other terms and conditions on which the stations make their programming available to unaffiliated MVPDs.
- The "burden shifting" approach to proof of discriminatory pricing in the program access rules will be applied to complaints regarding retransmission consent negotiations involving the NBC and Telemundo O&O stations.
- The five-month "shot clock" applied to program access adjudications would apply to retransmission consent negotiations involving the NBC and Telemundo O&O stations.

#### **Journalistic Independence**

**Commitment #16.** The combined entity will continue the policy of journalistic independence with respect to the news programming organizations of all NBCU networks and stations, and will extend these policies to the potential influence of each of the owners. To ensure such independence, the combined entity will continue in effect the position and authority of the NBC News ombudsman to address any issues that may arise.

#### **Labor-Management Relations**

**Commitment # 17.** Comcast respects NBCU's existing labor-management relationships and expects them to continue following the closing of the transaction. Comcast plans to honor all of NBCU's collective bargaining agreements.

# APPENDIX N

**JOINT WRITTEN TESTIMONY OF**  
**BRIAN L. ROBERTS**  
**CHAIRMAN AND CHIEF EXECUTIVE OFFICER**  
**COMCAST CORPORATION**

**AND**

**JEFF ZUCKER**  
**PRESIDENT AND CHIEF EXECUTIVE OFFICER**  
**NBC UNIVERSAL**

**TO THE**  
**COMMITTEE ON THE JUDICIARY**  
**UNITED STATES HOUSE OF REPRESENTATIVES**

**HEARING ON**  
**“COMPETITION IN THE MEDIA AND ENTERTAINMENT**  
**DISTRIBUTION MARKET”**

**February 25, 2010**

**JOINT WRITTEN TESTIMONY OF**

**BRIAN L. ROBERTS  
CHAIRMAN AND CHIEF EXECUTIVE OFFICER  
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**AND**

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**TO THE  
COMMITTEE ON THE JUDICIARY  
UNITED STATES HOUSE OF REPRESENTATIVES**

**February 25, 2010**

Mr. Chairman, and Members of the Committee, we are pleased to appear before you today to discuss Comcast Corporation's ("Comcast") planned joint venture with General Electric Company ("GE"), under which Comcast will acquire a majority interest in and management of NBC Universal ("NBCU"). As you know, the proposed transaction will combine in a new joint venture the broadcast, cable programming, movie studio, theme park, and online content businesses of NBCU with the cable programming and certain online content businesses of Comcast. This content-focused joint venture will retain the NBCU name.

The new NBCU will benefit consumers and will encourage much-needed investment and innovation in the important media sector.

How will it benefit consumers?

First, the new venture will lead to increased investment in NBCU by putting these important content assets under the control of a company that is focused exclusively on the communication and entertainment industry. This will foster enhanced investment in both content development and delivery, enabling the new NBCU to become a more competitive and innovative player in the turbulent and ever-changing media world. Investment and innovation will also preserve and create sustainable media and technology jobs in the U.S.

Second, the transaction will promote the innovation, content, and delivery that consumers want and demand. The parties have made significant commitments in the areas of local news and information programming, enhanced programming for diverse audiences, and more quality educational and other content for children and families.

And finally, Comcast's commitment to preserve NBCU's journalistic independence and to sustain and invest in the NBC broadcast network will promote the quality news, sports, and diverse programming that have made this network great over the last 50 years. We discuss these specific and verifiable public interest commitments later in this testimony, and a summary is attached.

The new NBCU will advance key policy goals of Congress: diversity, localism, innovation, and competition. With Comcast's demonstrated commitment to investment and innovation in communications, entertainment, and information, the new NBCU will be able to increase the quantity, quality, diversity, and local focus of its content, and accelerate the arrival of the multiplatform, "anytime, anywhere" future of video programming that Americans want. Given the intensely competitive markets in which Comcast and NBCU operate, as well as existing law and regulations, this essentially vertical transaction will benefit consumers and spur competition, and will not present any potential harm in any marketplace.

NBCU, currently majority-owned and controlled by GE, is an American icon – a media, entertainment, and communications company with a storied past and a promising future. At the heart of NBCU's content production is the National Broadcasting Company ("NBC"), the nation's first television broadcast network and home of one of the crown jewels of NBCU, NBC News. NBCU also has two highly regarded cable news networks, CNBC and MSNBC. In addition, NBCU owns Telemundo, the nation's second-largest Spanish-language broadcast network, with substantial Spanish-language production facilities located in the U.S. NBCU's other assets include 26 local broadcast stations (10 NBC owned-and-operated stations ("O&Os"), 15 Telemundo O&Os, and one independent Spanish-language station), numerous national cable programming networks, a motion picture studio with a library of several thousand films, a TV production studio with a library of television series, and an international theme park business.

Comcast, a leading provider of cable television, high-speed Internet, digital voice, and other communications services to millions of customers, is a pioneer in enabling consumers to watch what they want, when they want, where they want, and on the devices they want. Comcast is primarily a distributor, offering its customers multiple delivery platforms for content and services. Although Comcast owns and produces some cable programming channels and online content, Comcast owns relatively few national cable networks, none of which is among the 30 most highly rated, and, even including its local and regional networks, Comcast accounts for a tiny percentage of the content industry. The majority of these content businesses will be contributed to the joint venture. The distribution side of Comcast (referred to as "Comcast Cable") is not being contributed to the new NBCU and will remain under Comcast's ownership and control.

The proposed transaction is primarily a *vertical* combination of NBCU's content with Comcast's multiple distribution platforms. Antitrust law, competition experts, and the FCC have long recognized that vertical combinations can produce significant benefits. They also have found that vertical combinations with limited horizontal overlaps generally do not threaten competition.

The transaction takes place against the backdrop of a communications and entertainment marketplace that is highly dynamic and competitive, and becoming more so every day. NBCU – today and post-transaction – faces competition from a large and growing roster of content providers. There are literally hundreds of national television networks and scores of regional networks. These cable networks compete for programming, for viewer attention, and for distribution on various video platforms, not only with each other but also with countless other video choices.

In addition, content producers increasingly have alternative outlets available to distribute their works, free from any purported “gatekeeping” networks or distributors. Today, NBCU has powerful marketplace incentives to purchase the best available programming, regardless of source. NBCU’s programming schedule bears this out. Next week, third parties will own well over half of the 47 primetime (8-11pm) programs on NBC and its major cable channels (USA, Bravo, Oxygen, and Syfy). Post-transaction, the new NBCU will have the incentive and the financial resources to compete effectively with other leading content providers such as Disney/ABC, Time Warner, Viacom, and News Corp. by providing consumers the high-quality programming they want, and it will have no incentive – or ability – to restrict competition or otherwise harm the public interest.

Competition is fierce among distributors as well. Today, consumers in every geographic area have multiple choices of multichannel video programming distributors (“MVPDs”) and can also obtain video content from many non-MVPDs. In addition to the local cable operator, consumers can choose from two MVPDs offering direct broadcast satellite (“DBS”) service – DirecTV and Dish Network – which are now the second and third largest MVPDs in America, respectively. Verizon and AT&T, along with other wireline overbuilders, are strong, credible competitors, offering a fourth MVPD choice to tens of millions of American households and a fifth choice to some. Indeed, as competition among MVPDs has grown, Comcast’s nationwide share of MVPD subscribers has steadily decreased (it is now less than 25 percent, a share that the FCC has repeatedly said is insufficient to allow an MVPD to engage in anticompetitive conduct). Moreover, current market dynamics are more telling than static measures of market shares; over the past two years, Comcast lost 1.2 million net video subscribers while its competitors continued to add subscribers – DirecTV, Dish Network, AT&T, and Verizon added 7.6 million net video customers over the same time period.

Consumers can also access high-quality video content from myriad other sources. Some households continue to receive their video through over-the-air broadcast signals, which have improved in quality and increased in quantity as a result of the broadcast digital television transition. Millions of households purchase or rent digital video discs (“DVDs”) from one of thousands of national, regional, or local retail outlets, including Walmart, Blockbuster, and Hollywood Video, as well as Netflix, MovieCrazy, Café DVD, and others who provide DVDs by mail. High-quality video content also is increasingly available from a rapidly growing number of online sources that include Amazon, Apple TV, Blinkx, Blip.tv, Boxee, Clicker.com, Crackle, Eeclectus, Hulu, iReel,

iTunes, Netflix, Sezmi, SlashControl, Sling, Vevo, Vimeo, VUDU, Vuze, Xbox, YouTube and many more. These sites offer consumers historically unprecedented quantities of professionally-produced content and user-generated content that can be accessed from a variety of devices, including computers, Internet-equipped televisions, videogame boxes, Blu-ray DVD players, and mobile devices. In addition, there is a huge supply of user-generated video content, including professional and quasi-professional content. YouTube, for example, which is by far the leader in the nascent online video distribution business, currently receives and stores virtually an entire day's worth of video content for its viewers *every minute*. And there are no significant barriers to entry to online video distribution. Thus, consumers have a staggering variety of sources of video content beyond Comcast and its rival MVPDs.

The video marketplace truly has no gatekeepers. As the United States Court of Appeals for the D.C. Circuit observed last year, "[T]he record is replete with evidence of ever increasing competition among video providers; Satellite and fiber optic video providers have entered the market and grown in market share since the Congress passed the 1992 [Cable] Act, and particularly in recent years. Cable operators, therefore, no longer have the bottleneck power over programming that concerned the Congress in 1992. Second, over the same period there has been a dramatic increase both in the number of cable networks and in the programming available to subscribers."

The combination of NBCU and Comcast's content assets under the new NBCU – coupled with management of the new NBCU by Comcast, an experienced, committed distribution innovator – will enable the creation of new pathways for delivery of content to consumers on a wide range of screens and platforms. The companies' limited shares in all relevant markets, fierce competition at all levels of the distribution chain, and ease of entry for cable and online programming ensure that the risk of competitive harm is insignificant. Moreover, the FCC's rules governing program access, program carriage, and retransmission consent provide further safeguards for consumers, as do the additional public interest commitments the companies have made to the FCC.

At the same time, the transaction's public interest benefits – particularly for the public interest goals of diversity, localism, competition, and innovation – are substantial. Through expanded access to outlets, increased investment in outlets, and lower costs, the new venture will be able to increase the amount, quality, variety, and availability of content, thus promoting *diversity*. This includes content of specific interest to diverse audiences, children and families, women, and other key audience segments. While NBCU and Comcast both already have solid records in creating and distributing diverse programming, the transaction will enable the new NBCU to expand the amount, quality, variety, and availability of content more than either company could do on its own. The new venture will also be able to provide more and better local programming, including local news and information programming, thereby advancing *localism*. The new NBCU and Comcast will be more innovative and effective players in video programming and distribution, spurring other content producers and distributors to improve their own services, thus enhancing *competition*. Marrying NBCU's programming assets with Comcast's multiple distribution platforms will make it easier for the combined entity to



experiment with new business models that will better serve consumers, thus promoting *innovation*.

In addition, Comcast and NBCU have publicly affirmed their continuing commitment to free, over-the-air broadcasting. Despite a challenging business and technological environment, the proposed transaction has significant potential to invigorate NBCU's broadcasting business and expand the important public interest benefits it provides to consumers across this country. NBC, Telemundo, their local O&Os, and their local broadcast affiliates will benefit by having the full support of Comcast, a company that is focused entirely on entertainment, information, and communications and that has strong incentives – and the ability – to invest in and grow the broadcast businesses it is acquiring, in partnership with the local affiliates.

Moreover, combining Comcast's expertise in multiplatform content distribution with NBCU's extensive content creation capabilities and video libraries will not only result in the creation of more and better programming, but will also encourage investment and innovation, accelerating the arrival of the multiplatform, "anytime, anywhere" future of video programming that Americans want. This is because the proposed transaction will remove negotiation friction that currently inhibits the ability of Comcast to implement its pro-consumer vision of multiplatform access to quality video programming. Post-transaction, Comcast will have access to more content that it can make available on a wider range of platforms, including the new NBCU's national and regional networks and Comcast's cable systems and video-on-demand ("VOD") platform, and online. This increase in the value of services offered to consumers by the new company will stimulate competitors – including non-affiliated networks, non-affiliated MVPDs, and the large and growing roster of participants in the video marketplace – to improve what they offer to consumers.

The past is prologue: Comcast sought for years to develop the VOD business, but it could not convince studio distributors – who were reluctant to permit their movies to be distributed on an emerging, unproven platform – to provide compelling content for VOD. This caution, though understandable in light of marketplace uncertainty, slowed the growth of an innovative and extremely consumer-friendly service. Comcast finally was able to overcome the contractual wrangling and other industry reluctance to participate in an innovative business model when it joined with Sony to acquire an ownership interest in Metro-Goldwyn-Mayer ("MGM"). This allowed Comcast to "break the ice" and obtain access to hundreds of studio movies that Comcast could offer for free on VOD. Thanks to Comcast's extensive efforts to foster the growth of this new technology, VOD has become very popular with consumers since it was invented in 2003 – the same year Apple unveiled the iTunes Music Store. Comcast customers have now used Comcast's VOD service more than 14 billion times – that's over 40 percent more than the number of downloads that consumers have made from the iTunes Store since 2003. By championing the growth of VOD, Comcast has been able to benefit not only its customers but also program producers, and it has stimulated other MVPDs to embrace the VOD model.

Similarly, there is every reason to believe that the transaction proposed here will create a pro-consumer impetus for making major motion pictures available sooner for in-home, on-demand viewing and for sustainable online video distribution – which, as the FCC has observed, will help to drive broadband adoption, another key congressional goal.

Comcast and the new NBCU will also be well positioned to help lead constructive efforts to develop consensus solutions to the problem of content piracy. NBCU has been a leading voice in the effort to reduce piracy in all its forms because it costs American jobs and trade opportunities. Comcast has consistently supported voluntary industry initiatives to deter piracy, educate consumers about copyright, and redirect them to legitimate sources of content. Together, the companies will redouble their efforts to persuade all the stakeholders to work together on the problem, while ensuring that consumer privacy and due process are always respected.

As noted above, the risk of competitive harm in this transaction is insignificant. Viewed from every angle, the transaction is pro-competitive:

First, combining Comcast's and NBCU's programming assets will give rise to no cognizable competitive harm. Even after the transaction, approximately six out of every seven channels carried by Comcast Cable will be unaffiliated with Comcast or the new NBCU. Comcast's national cable programming networks account for only about three percent of total national cable network advertising and affiliate revenues. While NBCU owns a larger number of networks, those assets account for only about nine percent of overall national cable network advertising and affiliate revenues. Therefore, in total, the new NBCU will account for only about 12 percent of total national cable network advertising and affiliate revenues. The new NBCU will rank as the fourth largest owner of national cable networks (measured by total revenues), behind Disney/ABC, Time Warner, and Viacom – which is *the same rank that NBCU has today*. Because both the cable programming market and the broader video programming market will remain highly competitive, the proposed transaction will not reduce competition or diversity, nor will it lead to higher programming prices to MVPDs, higher advertising prices to advertisers, or higher retail prices to consumers.

Second, Comcast's management and ownership interests in NBCU's broadcast properties raise no regulatory or competitive concern. While Comcast will own both cable systems and a stake in NBC owned-and-operated broadcast stations in a small number of Designated Market Areas ("DMAs"), the FCC's rules do not prohibit such cross-ownership, nor is there any policy rationale to disallow such relationships. Cross-ownership prohibitions that had been put in place decades ago have been repealed by actions of Congress, the courts, and the FCC. The case for any new prohibition, or any transaction-specific restriction, on cable/broadcast cross-ownership is even weaker today, given the increasingly competitive market for the distribution of video programming and robust competition in local advertising. And, importantly, each of the major DMAs in question has a significant number of media outlets, with at least seven non-NBCU over-the-air television stations in each DMA, as well as other media outlets, including radio.

Thus, numerous diverse voices and a vibrantly competitive local advertising environment will remain following the combination of NBCU's broadcast stations and Comcast cable systems in each of the overlap DMAs.

Third, the combination of Comcast's and NBCU's Internet properties similarly poses no threat to competition. There is abundant and growing competition for online video content. The dominant leader in online viewing (by far) is Google (through YouTube and other sites it has built or acquired), with nearly 55 percent of online video viewing. This puts Google well ahead of Microsoft, Viacom, and Hulu (a service in which NBCU holds a 32 percent, non-controlling interest), and even farther ahead of Fancast (operated by Comcast, and currently at well below one percent). All of these services competing with Google have low- or mid-single digit shares of online video viewing. There are countless other sites that provide robust competition and near-infinite consumer choice. Even if one restricts the analysis to "professional" online video content, the combined entity will still have a small share and face many competitors. On the Internet, content providers essentially control their own destinies since there are many third-party portals as well as self-distribution options. Entry is easy. Thus, the transaction will not harm the marketplace for online video.

Finally, a vertical combination cannot have anticompetitive effects unless the combined company has substantial market power in the upstream (programming) or downstream (distribution) market, and such circumstances do not exist here. As noted, the video programming, video distribution, and Internet businesses are fiercely competitive, and the proposed transaction does not reduce that competition. The recent history of technology demonstrates that distribution platforms are multiplying, diversifying, and increasingly rivalrous. Wired services have been challenged by both satellite and terrestrial wireless services. Cable has brought voice competition to the telephone companies; the telephone companies have added to the video competition that cable already faced; and both cable and phone companies are racing to deploy and improve broadband Internet. Static descriptions of markets have consistently failed to capture advances in distribution technologies. In this highly dynamic and increasingly competitive environment, speculative claims about theoretical problems arising from any particular combination should be subject to searching and skeptical scrutiny, given the accelerating power of technology to disrupt, continuously, all existing market structures.

In any event, there is a comprehensive regulatory structure already in place, comprising the FCC's program access, program carriage, and retransmission consent rules, as well as an established body of antitrust law that provides further safeguards against any conceivable vertical harms that might be presented by this transaction. The program access and program carriage rules address different aspects of the relationship between networks and MVPDs, and the retransmission consent rules address aspects of the relationship between MVPDs and broadcasters.

In a nutshell, the *program access* rules govern the process by which a satellite-delivered cable programming network that is affiliated with a cable operator sells its programming to MVPDs. These rules generally prohibit a cable operator from (i) unreasonably influencing whether an affiliated network sells its programming to an

unaffiliated MVPD (or the terms on which it does so), (ii) unreasonably discriminating in the prices, terms, and conditions of carriage arrangements among competing MVPDs, and (iii) establishing exclusive contracts between satellite-delivered cable-affiliated programming networks and any cable operator.

The *program carriage* rules apply to the process by which a cable operator -- or any other MVPD -- buys cable programming from unaffiliated programmers. These rules generally prohibit MVPDs from (i) requiring an equity interest in a program network as a condition of carriage; (ii) coercing an unaffiliated program network to provide (or punishing an unaffiliated program network for not providing) exclusive rights as a condition of carriage; and (iii) unreasonably restraining the ability of an unaffiliated program network to compete fairly by discriminating on the basis of affiliation in the selection, terms, or conditions for carriage.

The *retransmission consent* rules generally require that broadcasters and MVPDs bargain in good faith over retransmission consent (i.e., the right to retransmit a broadcaster's signal). Like the program access rules, the good-faith bargaining rules generally ban exclusivity and unreasonable discrimination.

Although the competitive marketplace and regulatory safeguards protect against the risk of anticompetitive conduct, the companies have offered an unprecedented set of commitments to provide assurances that competition will remain vibrant. Comcast will commit voluntarily to extend the key components of the FCC's program access rules to negotiations with MVPDs for retransmission rights to the signals of NBC and Telemundo O&O broadcast stations for as long as the FCC's current program access rules remain in place (and Comcast has expressed a willingness to discuss with the FCC making the program access rules binding on it even if the rules were to be overturned by the courts).<sup>1</sup> Of particular note, Comcast will be prohibited in retransmission consent negotiations from unduly or improperly influencing the NBC and Telemundo stations' decisions about whether to sell their programming, or the terms and conditions of sale, to non-affiliated distributors. It would also shift to NBCU the burden of justifying any differential pricing between competing MVPDs. And the companies would accept the five-month "shot

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<sup>1</sup> In October 2007, the FCC released an Order extending for an additional five years the ban on exclusive contracts between vertically integrated programmers and cable operators -- the one portion of the program access rules that Congress had slated to sunset in 2002. On appeal, Cablevision and Comcast have argued that the FCC applied an incorrect standard governing the circumstances under which the FCC may prevent the exclusivity rule from sunseting automatically; and that the FCC was required to let the rule sunset, or at least narrow it. Comcast was motivated in large part by the inequity of applying an anti-exclusivity rule to cable, while our satellite competitors are able to use exclusive programming contracts against us. Oral argument was held on September 22, 2009. Contrary to the claims of some outside parties, Comcast has not challenged all of the features of the program access rules in this litigation or asserted that the exclusivity ban, or any other portion of the program access rules, is unconstitutional. Rather, we have challenged only the extension of the exclusivity ban, and have reminded the FCC and the courts that they must take the First Amendment into account when they make, review, or apply the program access rules.

clock" that the Commission applies to program access adjudications that is intended to expedite resolution.

Moreover, the companies have offered concrete and verifiable commitments to ensure certain pro-consumer benefits of the transaction.

In addition to the commitment to continue to provide free, over-the-air broadcasting, mentioned previously, the companies have committed that following the transaction, the NBC O&O broadcast stations will maintain the same amount of local news and information programming they currently provide for three years following the closing of the transaction and will produce an additional 1,000 hours per year of local news and information programming for distribution on various platforms. The combined entity will maintain NBCU's tradition of independent news and public affairs programming and its commitment to promoting a diversity of viewpoints, maintaining the journalistic integrity and independence of NBCU's news operations.

The companies also have committed that, within 12 months of closing the transaction, Telemundo will launch a new Spanish language digital broadcast channel drawing on programming from Telemundo's library. Additionally, Comcast will use its On Demand and On Demand Online platforms to increase programming choices available to children and families, as well as to audiences for Spanish-language programming. Within three years of closing the transaction, Comcast has committed to add 1,500 additional programming choices appealing to children and families and 300 additional programming choices from Telemundo and mun2 to its VOD platforms. Comcast also will continue to provide free or at no additional charge the same number of VOD choices that it now provides, and will make available within three years of closing an additional 5,000 VOD choices over the course of each month that are available free or at no additional charge.

As Comcast makes rapid advances in video delivery technologies, more channel capacity will become available. So Comcast will commit that, once it has completed its digital migration company-wide (anticipated to be no later than 2011), it will add two new independently-owned and -operated channels to its digital line-up each year for the next three years on customary terms and conditions. Independent programmers would be defined as networks that (i) are not currently carried by Comcast Cable, and (ii) are unaffiliated with Comcast, NBCU, or any of the top 15 owners of cable networks, as measured by revenues.

With respect to public, educational, and governmental ("PEG") channels, Comcast has affirmatively committed not to migrate PEG channels to digital delivery on any Comcast cable system until the system has converted to all-digital distribution, or until a community otherwise agrees to digital PEG channels, whichever comes first. Comcast has also committed to innovate in the delivery of PEG content On Demand and On Demand Online.

We have proposed that these commitments be included in any FCC order approving the transaction and become binding on the parties upon completion of the transaction. A summary of the companies' commitments is attached to this testimony.

In the end, the proposed transaction simply transfers ownership and control of NBCU from GE, a company with a very diverse portfolio of interests, to Comcast, a company with an exclusive focus on, and a commitment to investing its resources in, its communications, entertainment, and information assets. This transfer of control, along with the contribution of Comcast's complementary content assets, will enable the new NBCU to better serve consumers. The new NBCU will advance key public policy goals: diversity, localism, competition, and innovation. Competition, which is already pervasive in every one of the businesses in which the new NBCU – and Comcast Cable – will operate, provides abundant assurance that consumer welfare not just be safeguarded, but increased. Comcast and NBCU will succeed by competing vigorously and fairly.

We intend to use the combined assets to accelerate and improve the range of choices that American consumers enjoy for entertainment, information, and communications. We would welcome your support.

## **COMCAST/NBCU TRANSACTION PUBLIC INTEREST COMMITMENTS**

Comcast, GE, and NBC Universal take seriously their responsibilities as corporate citizens and share a commitment to operating the proposed venture in a way that serves the public interest. To demonstrate their commitment to consumers and to other media partners, the parties have made a set of specific, written commitments as part of their public interest filing with the Federal Communications Commission. Comcast, GE, and NBCU are committed to expanding consumer choice, ensuring the future of over-the-air broadcasting, enhancing programming opportunities, ensuring that today's highly competitive marketplace remains so, and maintaining journalistic independence for NBC's news properties. The parties' commitment to these principles will ensure that consumers are the ultimate beneficiaries of the proposed Comcast/NBCU transaction.

### **Applicants' Voluntary Public Interest Commitments**

#### **Local Programming**

**Commitment #1.** The combined entity remains committed to continuing to provide free over-the-air television through its O&O broadcast stations and through local broadcast affiliates across the nation. As Comcast negotiates and renews agreements with its broadcast affiliates, Comcast will continue its cooperative dialogue with its affiliates toward a business model to sustain free over-the-air service that can be workable in the evolving economic and technological environment.

**Commitment #2.** Comcast intends to preserve and enrich the output of local news, local public affairs and other public interest programming on NBC O&O stations. Through the use of Comcast's On Demand and On Demand Online platforms, time slots on cable channels, and use of certain windows on the O&O schedules, Comcast believes it can expand the availability of all types of local and public interest programming.

- For three years following the closing of the transaction, NBC's O&O stations will maintain the same amount of local news and information programming that they currently provide.
- NBC's O&O stations collectively will produce an additional 1,000 hours a year of local news and information programming. This additional local content will be made available to consumers using a combination of distribution platforms.

#### **Children's Programming**

**Commitment #3.** Comcast will use its On Demand and On Demand Online platforms and a portion of the NBC O&Os' digital broadcast spectrum to speak to kids. Comcast intends to develop additional opportunities to feature children's content on all available platforms.

- Comcast will add 500 VOD programming choices appealing to children and families to its central VOD storage facilities within 12 months of closing and will add an additional 1,000 such VOD choices (for a total of 1,500 additional VOD choices) within three years of closing. (The majority of Comcast's cable systems will be connected to Comcast's central VOD storage facilities within 12 months of closing and substantially all will be connected within three years of closing.) Comcast will also make these additional choices available online to authenticated subscribers to the extent that Comcast has the requisite online rights.
- For three years following closing, each of NBC's O&O stations will provide one additional hour per week of children's educational and informational programming utilizing one of the station's multicast channels.

**Commitment #4.** Comcast reaffirms its commitment to provide clear and understandable on-screen TV Ratings information for all covered programming across all networks (broadcast and cable) of the combined company, and to apply the cable industry's best-practice standards for providing on-screen ratings information in terms of size, frequency, and duration.

- NBCU will triple the time that program ratings remain on the air after each commercial break (from 5 seconds to 15 seconds).
- NBCU will make program ratings information more visible to viewers by using a larger format.

**Commitment #5.** In an effort to constantly improve the tools and information available for parents, Comcast will expand its growing partnership with Common Sense Media ("CSM"), a highly respected organization offering enhanced information to help guide family viewing decisions. Comcast will work to creatively incorporate CSM information in its emerging On Demand and On Demand Online platforms and other advanced platforms, and will look for more opportunities for CSM to work with NBCU.

- Comcast currently gives CSM content prominent placement on its VOD menus. Comcast and the new NBCU will work with CSM to carry across their distribution platforms more extensive programming information and parental tools as they are developed by CSM. Comcast and NBCU will explore cooperative efforts to develop digital literacy and media education programs that will provide parents, teachers, and children with the tools and information to help them become smart, safe, and responsible users of broadband.
- Upon closing and pursuant to a plan to be developed with CSM, Comcast will devote millions of dollars in media distribution resources to support public awareness efforts over the next two years to further CSM's digital literacy campaign. The NBCU transaction will create the opportunity for CSM and Comcast to work with NBCU's broadcast networks, local broadcast stations, and cable networks to provide a targeted and effective public education campaign on



digital literacy, targeting underserved areas, those with high concentrations of low income residents and communities of color, as well as target Latino communities with specifically tailored Spanish-language materials.

#### **Programming for Diverse Audiences**

**Commitment #6.** Comcast intends to expand the availability of over-the-air programming to the Hispanic community utilizing a portion of the digital broadcast spectrum of Telemundo's O&Os (as well as offering it to Telemundo affiliates) to enhance the current programming of Telemundo and mun2.

- Within 12 months of closing the transaction, Telemundo will launch a new Spanish language channel using programming from Telemundo's library that has had limited exposure, to be broadcast by each of the Telemundo O&O stations on one of their multicast channels. The Telemundo network also will make this new channel available to its affiliated broadcast stations on reasonable commercial terms.

**Commitment #7.** Comcast will use its On Demand and On Demand Online platforms to feature Telemundo programming.

**Commitment #8.** Comcast intends to continue expanding the availability of mun2 on the Comcast Cable, On Demand, and On Demand Online platforms.

- Comcast will increase the number of VOD choices from Telemundo and mun2 available on its central VOD storage facilities from approximately 35 today, first to 100 choices within 12 months of closing and then to a total of 300 additional choices within three years of closing. Comcast will also make these additional choices available online to its subscribers to the extent that it has the requisite online rights.

#### **Expanded Video On Demand Offerings At No Additional Charge**

**Commitment #9.** Comcast currently provides approximately 15,000 VOD programming choices free or at no additional charge over the course of a month. Comcast commits that it will continue to provide at least that number of VOD choices free or at no additional charge. In addition, within three years of closing the proposed transaction, Comcast will make available over the course of a month an additional 5,000 VOD choices via its central VOD storage facilities for free or at no additional charge.

**Commitment #10.** NBCU broadcast content of the kind previously made available at a per-episode charge on Comcast's On Demand service and currently made available at no additional charge to the consumer will continue to be made available at no additional charge for the three-year period after closing.